



**BOISE, TUESDAY, FEBRUARY 5, 2008, AT 9:00 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 33356**

<b>STEVEN E. THOMAS,</b>	)
	)
<b>Petitioner-Appellant,</b>	)
	)
<b>v.</b>	)
	)
<b>STATE OF IDAHO,</b>	)
	)
<b>Respondent.</b>	)
_____	)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael E. Wetherell, District Judge.

Nevin, Benjamin, McKay & Bartlett, LLP, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Daniel W. Bower, Deputy Attorney General, Boise, for respondent.

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In early February 2002, a fire destroyed the interior of Thomas's mobile home. Thomas, who called 911, told investigators that he lit candles upon arriving home from a bar, smoked a cigarette in bed, and later awoke and went to the store to buy more cigarettes. Thomas stated that, when he returned from the store, his home was in flames. A local fire investigator who arrived on the scene that day concluded in his report that the cause of the fire was undetermined.

The day after the fire, a woman from an escort service called the police to inform them that Thomas had admitted to her that he burned his home for the insurance proceeds. The escort allowed the police to set up surveillance in her apartment and she invited Thomas over. While at the escort's apartment, Thomas confessed to the escort that he had lit his bedding on fire with candles in order to collect the proceeds from his recently-purchased renter's insurance.

Thomas was charged with first degree arson. At trial, the escort testified concerning Thomas's confession, and the video from the escort's apartment containing Thomas's confession was played for the jury. The jury found Thomas guilty. Thomas appealed and this Court affirmed his judgment of conviction and sentence.

Thomas filed a pro se application for post-conviction relief, was granted counsel, and then filed an amended post-conviction application containing claims of ineffective assistance of both trial and appellate counsel. After an evidentiary hearing at which Thomas and his trial attorney testified, the district court dismissed Thomas's post-conviction application. Thomas appeals.

**BOISE, TUESDAY, FEBRUARY 5, 2008, AT 10:30 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 33222**

<b>KIM BRENT TAYLOR,</b>	)
	)
<b>Plaintiff-Appellant,</b>	)
	)
<b>v.</b>	)
	)
<b>STATE OF IDAHO,</b>	)
	)
<b>Defendant-Appellant.</b>	)
_____	)

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

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Kim Brent Taylor was convicted of sexual battery of a minor child and sentenced, with the court retaining jurisdiction. Because the recommended updated psychosexual evaluation had not been performed, the scheduled rider review hearing was continued and reset for after the 180-day period of retained jurisdiction. At the rider review hearing, the court placed Taylor on probation for seven years. The state appealed, and the Idaho Supreme Court held that the court did not have jurisdiction to grant probation since it did so after the 180-day period.

Taylor filed a petition for post-conviction relief alleging the court had violated his right to due process by failing to hold the review hearing before it lost jurisdiction and that his counsel had been ineffective for failing to compel a rider review hearing within the time limitation. The district court granted the state's motion for summary disposition on the due process claim and dismissed the ineffective assistance of counsel claim after an evidentiary hearing. It then granted Taylor's motion for credit for time served, allowing credit for the time he spent at liberty between when the court placed him on probation and the Supreme Court's decision. The state now appeals the court's grant of credit for time served, and Taylor appeals the denial of his post-conviction petition.

**BOISE, TUESDAY, FEBRUARY 5, 2008, AT 1:30 P.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 33410**

<b>STATE OF IDAHO,</b>	)
	)
<b>Plaintiff-Appellant,</b>	)
	)
<b>v.</b>	)
	)
<b>JEFFORY A. STEWART,</b>	)
	)
<b>Defendant-Respondent.</b>	)
_____	)

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Ronald E. Bush, District Judge.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for appellant.

Molly J. Huskey, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, for respondent.

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The State appeals from the district court's order granting Jeffory A. Stewart's motion to suppress evidence of methamphetamine found during a traffic stop. Stewart was stopped for a driving infraction, and because of ongoing investigations into allegations of drug use, five officers responded at the scene. While the initial officer was writing a citation and running checks on Stewart's identification, the other officers questioned him about a no-contact order and the drug allegations. Stewart consented to a search of his vehicle, which yielded contraband. The district court granted Stewart's motion to suppress this evidence, holding that the officers' conduct had unconstitutionally transformed the encounter from a routine traffic stop to a drug investigation, and that Stewart's consent to the search of his car was involuntary. The State appeals, contending that the district court applied the wrong standard.

**BOISE, THURSDAY, FEBRUARY 7, 2008, AT 9:00 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 33489**

<b>CAROLYN BOOTS and WILLIAM</b>	)
<b>BOOTS, husband and wife, and LANDON</b>	)
<b>BOOTS, a minor child by and through his</b>	)
<b>parents CAROLYN and WILLIAM BOOTS,</b>	)
<b>and JASON BOOTS, a minor child by and</b>	)
<b>through his parents CAROLYN and</b>	)
<b>WILLIAM BOOTS,</b>	)
	)
<b>Plaintiffs-Appellants,</b>	)
	)
<b>v.</b>	)
	)
<b>JACK and KAREN WINTERS, husband and</b>	)
<b>wife,</b>	)
	)
<b>Defendants-Respondents.</b>	)
	)

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Appeal from the District Court of the Third Judicial District, State of Idaho,  
Canyon County. Hon. Gregory M. Culet, District Judge.

Crandall Law Office, Boise, for appellant.

Hall, Farley, Oberrecht & Blanton, Boise, for respondent.

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Jack Winters and Karen Winters (the Winterses) rented a residence to Mario Martinez in October 2002. Martinez moved into the residence with his family and two dogs. Near the residence rented to Martinez, Carolyn Boots and William Boots lived with their sons Jason Boots and Landon Boots (the Bootses). On the morning of November 4, 2002, one of Martinez's dogs attacked Landon. Jason ran to the Bootses' residence and notified Carolyn that Martinez's dog was attacking Landon. Carolyn separated the dog from Landon, but the dog then attacked Carolyn. The police arrived and stopped the attack by shooting and killing the dog. Landon and Carolyn both suffered injuries. The Bootses filed a complaint setting forth fourteen tort claims, including claims of common law negligence against the Winterses. The Winterses filed an answer to the complaint and a motion for summary judgment. At a hearing, the Bootses argued in opposition to the Winterses' motion for summary judgment. The district court granted summary judgment for the Winterses on all claims against them. The Bootses appeal, challenging dismissal of their common-law negligence claim.

**BOISE, THURSDAY, FEBRUARY 7, 2008, AT 10:30 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 32857**

<b>STATE OF IDAHO,</b>	)
	)
<b>Plaintiff-Respondent,</b>	)
	)
<b>v.</b>	)
	)
<b>MARCUS ANTHONY MITCHELL, II,</b>	)
	)
<b>Defendant-Appellant.</b>	)
_____	)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Darla S. Williamson, District Judge.

Nevin, Benjamin, McKay & Bartlett, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

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On July 11, 2005, two people forced their way into an apartment. During the ensuing scuffle, John Hargis was shot five times, while his aggressor, Matthew Nuuvalli, was shot once through the hand. The two intruders fled, taking \$500 in cash from Hargis's dresser drawer. Police identified Marcus Anthony Mitchell, II as a potential suspect. Friends of Hargis described a female as the second person who entered the apartment, wielding a gun, later identified as Denise Quintana, Mitchell's girlfriend. Police identified shell-casings in Hargis's apartment imprinted with GFL 9 mm Luger. Two GFL 9mm Luger cartridges were found in a suitcase in Mitchell and Quintana's apartment.

Nuuvalli, Mitchell, and Quintana were indicted on one count each of aggravated battery, a felony, I.C. §§ 18-903(c), 18-907(1)(b), 18-204, felony robbery, I.C. §§ 18-6501, 18-6502, 18-204, and felony burglary, I.C. § 18-1401. Additionally, Nuuvalli was indicted for use of a firearm in the commission of a crime, I.C. § 19-2520. Nuuvalli pled guilty to the charges of aggravated battery and use of a firearm, and the remaining two counts against him were dismissed. He testified at Mitchell's trial, detailing their initial plan to steal from Hargis. Mitchell's niece, Y.M., testified that on the night of the shooting she was watching television at her home. Mitchell and his friend, Nuuvalli arrived and Nuuvalli was cradling one arm against his chest as though injured and he went directly to the bathroom. The next day, while Y.M. was having breakfast, her grandmother came in from the back yard holding two guns, which were immediately placed in a box and then removed from the house.

Mitchell was convicted on all three counts and subsequently sentenced. Mitchell filed a Rule 35 motion for a reduction of his sentence, which the district court denied. Mitchell now appeals as to the sufficiency of the evidence to corroborate the accomplice testimony and to uphold his conviction for aggravated battery, and from the denial of his Rule 35 motion for reduction of sentence.

**BOISE, THURSDAY, FEBRUARY 7, AT 1:30 P.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 33622**

<b>STATE OF IDAHO,</b>	)
	)
<b>Plaintiff-Respondent,</b>	)
	)
<b>v.</b>	)
	)
<b>GERMAN CASTRO,</b>	)
	)
<b>Defendant,</b>	)
	)
<b>and</b>	)
	)
<b>STEVEN ELLEFSON dba BEST BAIL</b>	)
<b>BONDS,</b>	)
	)
<b>Real Party in Interest-Appellant.</b>	)
_____	)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael R. McLaughlin, District Judge.

Weigt Law Offices, Chtd., Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Daniel W. Bower, Deputy Attorney General, Boise, for respondent.

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While on probation for another conviction, German Castro was arrested for felony possession of cocaine and two misdemeanors. A motion for probation violation was filed and bond was set at \$20,000. Bond was also set for the misdemeanors and the felony possession charges. Steven Ellefson, acting for Best Bail Bonds, submitted surety bonds on behalf of Castro in all three of the cases and Castro was released. Castro denied that he violated his probation and a hearing was set where the court found he had, indeed, done so. Castro then failed to appear at the dispositive hearing, and the court forfeited the \$20,000 bond, with the clerk mailing a notice of forfeiture of bail bond to Ellefson. Ellefson, however, filed a motion to set aside the forfeiture, dismiss the action, or in the alternative, exonerate bond, arguing that he had not undertaken a bond in that case, because his copy of the bond form listed a different case number than that on the notice of forfeiture. Following a hearing on the issue, Ellefson submitted an affidavit averring that he did not undertake a bond in the case at issue. The district court denied the motion to set aside forfeiture. Ellefson now appeals.



**BOISE, TUESDAY, FEBRUARY 12, 2008, AT 10:30 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 32516**

<b>STATE OF IDAHO,</b>	)
	)
<b>Plaintiff-Respondent,</b>	)
	)
<b>v.</b>	)
	)
<b>KRISTINA G. ROBINSON,</b>	)
	)
<b>Defendant-Appellant.</b>	)
_____	)

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Ronald E. Bush, District Judge.

Molly J. Huskey, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

In February 2005, police officers set out to execute a search warrant at a residence. The search warrant covered the residence and was based two sales of methamphetamine the homeowner had made to a confidential informant--once at her house and once at the bar where she worked. On the day of the search and in anticipation of execution of the warrant, officers conducted surveillance at the bar where the homeowner worked so that she could be apprehended after leaving work but before arriving at her home. During surveillance at the bar, officers recorded the license plates of several vehicles in the parking lot, one of which belonged to Robinson.

When a detective arrived at the residence to execute the warrant, he observed four individuals standing in the driveway next to some automobiles approximately fifteen feet from the porch. After the identity of Robinson was obtained, a drug dog conducted an exterior sniff of Robinson's vehicle--the same vehicle that had been observed earlier in the day parked at the bar where the homeowner worked. The dog alerted on the driver's side door and then spontaneously jumped through the open window and alerted aggressively on the center console. A search of the console revealed a methamphetamine pipe. Robinson told officers that the pipe was hers, and she was charged with possession of a controlled substance.

Robinson filed a motion to suppress the methamphetamine pipe, claiming that there was no basis to conduct a warrantless search of her automobile. After a hearing, the district court denied Robinson's motion to suppress. Robinson pled guilty to possession of a controlled

substance, reserving the right to appeal the denial of her motion to suppress. On appeal, Robinson argues that the pipe should have been suppressed as tainted evidence based on her contention that the officers unreasonably extended her detention in violation of the Fourth Amendment to the United States Constitution.

**BOISE, TUESDAY, FEBRUARY 12, 2008, AT 1:30 P.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 33519**

<b>STATE OF IDAHO,</b>	)
	)
<b>Plaintiff-Respondent,</b>	)
	)
<b>v.</b>	)
	)
<b>EDUARDO IZAGUIRRE,</b>	)
	)
<b>Defendant-Appellant.</b>	)
_____	)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge.

Nevin, Benjamin, McKay & Bartlett, LLP, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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Eduardo Izaguirre appeals from his conviction for second degree murder. He contends that his sentence of life imprisonment with sixty years fixed is excessive, that the district court erred by denying his motion for a neuropsychological evaluation at public expense to support Izaguirre's motion to reduce the sentence, that the district court erred by denying his motion to reduce the sentence on the record presented, and that the district court erred by imposing restitution in an amount exceeding Izaguirre's present or future ability to pay.